Supreme Court, U.S.
FILED

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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

JOSEPH STAHULAK,

Petitioner,

v.

THE CITY OF CHICAGO;
THE CHICAGO FIRE DEPARTMENT;
and RAYMOND E. OROZCO,
Fire Commissioner of the City of Chicago,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Illinois

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Does the petitioner, Joseph Stahulak, as a member of the Chicago Firefighters Union, Local No. 2, International Association of Firefighters, AFL-CIO-CIC, have standing to sue the respondent, the City of Chicago, for the purpose of vacating an arbitrator's award?

PARTIES TO THE PROCEEDINGS BELOW

Joseph Stahulak, petitioner here, was the appellee and appellant below;

The City of Chicago, The City of Chicago Fire Department, and Raymond E. Orozco, respondents here, were the appellants and appellees below;

Chicago Firefighters Union, Local No. 2, International Association of Firefighters, AFL-CIO-CIC, was the defendant below.

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PETITION FOR WRIT OF CERTIORARI

The petitioner respectfully requests this Court to issue a Writ of Certiorari to the Supreme Court of Illinois, to review that Court's decision and opinion entered on September 24, 1998 (App. A), with a subsequent denial of Petition for Rehearing on November 30, 1998 (App. B).

OPINIONS BELOW

On September 24, 1998, the Supreme Court of Illinois affirmed the decision of the Appellate Court of Illinois, First District (App. C), reversing the Circuit Court of Cook County's decision that the petitioner, Joseph Stahulak, did not have standing to sue the respondent, the City of Chicago, for the purpose of vacating an arbitrator's award, with the Illinois Supreme Court holding that only the union could maintain such a cause of action as it would be the only proper party to represent the petitioner based upon the collective bargaining agreement between the union and the City of Chicago relative to the firefighter-city collective bargaining agreement (App. A).

On November 30, 1998, the Supreme Court of Illinois denied a Petition for Rehearing (App. B).

JURISDICTION

1. The decision of the Supreme Court of Illinois was entered on September 24, 1998.

2. The Petition for Rehearing was denied by the Supreme Court of Illinois on November 30, 1998.

3. The Petition for Writ of Certiorari was filed less than 90 days from the denial of the Petition for Rehearing by the Supreme Court of Illinois on November 30, 1998.

4. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment V:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grant Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy or life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIV:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person or life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Statement of Undisputed Facts

Prior to November 16, 1991, the date of the petitioner's discharge, the collective bargaining agreement between the Chicago Fire Fighters Union, Local #2, International Association of Fire Fighters, AFL-CIO-CIC, and the City of Chicago, Illinois, Section 16.2, entitled Discipline and Discharge (C168-169), provided as follows:

> Section 16.2 Discipline and Discharge
>
> E. The Employer shall conduct disciplinary investigations when it receives complaints or has reason to believe an employee has failed to fulfill his responsibilities as an employee and just cause for discipline exists. It is understood that polygraph examinations will not be used by the Employer in any phase of disciplinary investigations.
>
> Prior to taking any final, disciplinary action and concluding its investigation, the Employer shall notify the employee of the contemplated measure of discipline to be imposed, and shall meet with the employee involved and inform him/her of the reasons for such contemplated disciplinary action. Copies of the following documents shall be given to the employee at this notification and review meeting:
>
> 1. Allegation of violations of Rules & Regulations
> 2. Statement of charges and specifications
> 3. Employee's initial statement of facts
> 4. Acknowledgment of notification and review
> 5. Disciplinary officer's recommendation
> 6. Copies of the employee's pertinent past discipline

> The employee shall be entitled to Union representation at such meetings and shall be given the opportunity to rebut the reasons for such proposed discipline.

On January 28, 1993, arbitrator Alex Elson issued an award, providing among other things, specifically paragraph 2, that the petitioner, Joseph Stahulak, was to be reinstated as a probationary firefighter for the purpose of enabling him to receive the safeguards of §16.2 of the collective bargaining agreement. (C169-170, C190)

In paragraph 2 of the award, it was further provided that the expiration of the probationary period for Joseph Stahulak was to be stayed until the final action of the Department. (C214)

Pursuant to 710 ILCS 5/12, vacating an award, the Court has the power to vacate an award if the arbitrator has exceeded his powers. (C170)

Subsequent to the entry of the award, the petitioner was placed on administrative leave with pay pursuant to a memorandum directed to him from Charles Stewart III, Assistant Director of Personnel, Exhibit C herein, which provided that he was to be on administrative leave as of March 1, 1993, with pay until further notice. (C170, C215)

On March 15, 1993, the petitioner, Joseph Stahulak, was paid for a period covering March 1, 1993 to March 15, 1993, and on March 31, 1993, he was paid covering a period from March 15, 1993 until March 29, 1993; said payroll stubs marked Group Exhibit D herein. (C170, C36-37)

On March 29, 1993, the petitioner was discharged from the Chicago, Illinois, Fire Department; a copy of

said discharge dated March 29, 1993, marked Exhibit F herein. (C170, C218)

Statement of Disputed Facts

On November 16, 1991, the petitioner, Joseph Stahulak, was discharged as a probationary firefighter for violating the City of Chicago's residency requirement in that he did not reside within the City of Chicago, which allegation the petitioner denies in his affidavit attached as Exhibit I. (C168, C228)

The petitioner could not be discharged as a probationary firefighter without proper procedural due process. (C171)

The arbitrator, Alex Elson, exceeded his power by staying probationary period for Joseph Stahulak in conjunction with his reinstatement of Joseph Stahulak to the position of probationary firefighter for the purpose of enabling the City of Chicago Fire Department to comply with the proper procedural due process as provided in Section 16.2 of the collective bargaining agreement between the Chicago Fire Fighters Union, Local #2, International Association of Fire Fighters, AFL-CIO-CIC, and the City of Chicago, Illinois. (C171)

When the petitioner, Joseph Stahulak, was placed on administrative leave on March 1, 1993, he lacked two weeks of achieving the status of a non-probationary firefighter. (C171)

As a non-probationary firefighter, the petitioner could not be discharged unless he was provided the grievance procedure, including arbitration challenging the discharge as to whether just cause existed for termination,

per the collective bargaining agreement, Article XVI, General Provisions, §16.2, paragraphs A and B, Exhibit E herein. (C171, C217)

The paid administrative leave for the month of March, 1993, resulted in the petitioner achieving the status of a non-probationary firefighter. (C171)

As a non-probationary firefighter, the petitioner could not be discharged without being afforded the grievance procedure as required by the collective bargaining agreement. (C171-172)

REASON FOR GRANTING THE WRIT

THE PETITIONER, JOSEPH STAHULAK, AS A MEMBER OF THE CHICAGO FIREFIGHTERS UNION, LOCAL NO. 2, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, AFL-CIO-CIC, DOES HAVE STANDING TO SUE THE RESPONDENT, THE CITY OF CHICAGO, FOR THE PURPOSE VACATING AN ARBITRATOR'S AWARD.

In this petition for writ of certiorari, Joseph Stahulak, the petitioner, requests the United States Supreme Court to consider addressing the issue of whether the petitioner has standing to maintain a cause of action against the City of Chicago if the union declines to represent a union member because of merit and monetary considerations.

In the record and briefs that were filed in the Supreme Court of Illinois, there was reference to the issue in the appellate court opinion of *Svoboda v. Department of Mental Health*, 162 Ill.App.3d 366 (1987), at 373, wherein the *Svoboda* appellate court ruled that it was not required to allege and prove that a union did not

fairly represent the union member in prior grievance proceedings as in many cases the union may give fair and adequate representation during the arbitration process, but declines to represent the petitioner in vacating the arbitration award because of merit and monetary considerations.

Relative to the *Svoboda* appellate court observations at 373, the *Svoboda* appellate court, at 371-372, stated:

> The above cases thus indicate that Federal courts have recognized that individual employees have standing to bring a suit to vacate an arbitrator's award. Yet, at the same time, the above cases also indicate that Federal decisions have placed upon employees the requirement of alleging and providing that the union did not fairly represent the employee at earlier stages. We agree with the Federal courts in recognizing that an individual has standing to bring suit to vacate an arbitrator's award, but we decline to encumber such right with the burden of alleging and proving that the union did not adequately represent the employee at earlier stages. In this regard, we first note that the Supreme Court has not addressed the same factual situation that we now decide. In *Vaca*, the Court was presented with an individual who had not exhausted the contractual grievance procedures, and, in *Hines*, the Court was presented with the issue of the effect of the term "final and binding." In the present case, plaintiffs need not allege that the union breached its duty of fair representation in order that they may get around a defense that they did not exhaust the contractual grievance procedures (see *Vaca v. Sipes* (1967), 386 U.S. 171, 17 L.Ed.2d 842, 87 S.Ct. 903), because, in the present case, plaintiffs did exhaust their contractual grievance procedures. And, in the present case,

> AFSCME, unlike the union in *Vaca*, is not vested with the sole power to invoke the higher stages of the grievance procedure, as section 6(b) clearly gives employees the right to institute grievance procedures on their own. Ill. Rev. Stat. 1985, ch. 48, par. 1606(b).

Since the petitioner had exhausted his remedies via the arbitrator's award, the petitioner has the right to file the petition to vacate the arbitrator's award on the basis that the union collective bargaining agreement does not give the union the exclusive right to seek judicial review to vacate such an award, nor is the petitioner prevented to have an individual access to the remedy that he is seeking wherein he has a personal stake in the arbitrator's award; that is, his job.

To support the *Svoboda* appellate court reasoning as to the above-stated issue, the court referred to the dissenting opinion of Justice Black as found in *Vaca v. Sipes*, 386 U.S. 171, 205, 17 L.Ed. 842, 866, 87 S.Ct. 903, 924 (1967), for the legal position that a meritorious grievance can be declined by a union for monetary reasons; namely lack of funds to pursue a grievance vigorously.

At page 209 of *Vaca v. Sipes*, 386 U.S. 171 (1967), the following is quoted from Judge Black's dissenting opinion:

> The Court suggests three reasons for giving the union this almost unlimited discretion to deprive injured employees of all remedies for breach of contract. The first is that "frivolous grievances" will be ended prior to time-consuming and costly arbitration. But here no one, not even the union, suggests that Benjamin Owens' grievance was frivo-

lous. The union decided not to take it to arbitration simply because the union doubted the chance of success. Even if this was a good-faith doubt, I think the union had the duty to present this contested, but serious, claim to the arbitrator whose very function is to decide such claims on the basis of what he believes to be right. Second, the Court says that allowing the union to settle grievances prior to arbitration will assure consistent treatment of "major problem areas in the interpretation of the collective bargaining contract." But can it be argued that whether Owens was "fit to work" presents a major problem in the interpretation of the collective bargaining agreement? The problem here was one of interpreting medical reports, not a collective bargaining agreement, and of evaluating other evidence of Owens' physical condition. I doubt whether consistency is either possible or desirable in determining whether a particular employee is able to perform a particular job. Finally, the Court suggests that its decision "furthers the interest of the union as statutory agent." I think this is the real reason for today's decision which entirely overlooks the interests of the injured employee, the only one who has anything to lose. Of course, anything which gives the union life and death power over those whom it is supposed to represent furthers its "interest." I simply fail to see how the union's legitimate role as statutory agent is undermined by requiring it to prosecute all serious grievances to a conclusion or by allowing the injured employee to sue his employer after he has given the union a chance to act on his behalf.

Based upon the analysis of Justice Black's dissenting opinion of the three reasons advanced by the majority opinion in *Vaca v. Sipes*, supporting a union's unlimited discretion in disposing of grievances, Stahulak's cause

of action was not frivolous which would provide the union with the argument that a "frivolous grievance" could be ended prior to time-consuming and costly arbitration as the Circuit Court determined that Stahulak's cause of action was not frivolous, but meritorious.

The Circuit Court ruled that the arbitrator's award exceeded the arbitrator's authority in extending the probationary period of the petitioner with the intent to deprive the petitioner to achieve the status of a permanent employee that would require a hearing and cause prior to dismissal.

As a result, the Circuit Court recognized that the petitioner had achieved the status of a permanent employee when the City of Chicago reinstated the petitioner by placing him on administrative leave and by paying his salary for the entire month resulting in the petitioner achieving the status of a permanent employee.

Likewise, the second reason advanced by the majority opinion of *Vaca v. Sipes* in supporting the Union was that the Union must be provided with the opportunity to settle grievances prior to arbitration and even after arbitration to ensure consistent treatment of "major problem areas in the interpretation of the collective bargaining contract."

However, in this matter, the question is not the interpretation of the collective bargaining agreement to ensure consistent treatment of major problem areas, when such consistent treatment would result in legalizing an arbitrator's award contrary to public policy, which would be contrary to existing court decisions. *American Federation of State, County & Municipal Employees v.*

State of Illinois, 124 Ill.2d 246, 160, 529 N.E.2d 534 (1988), *Rauh v. Rockford Products Corp.*, 143 Ill.2d 377, 393, 574 N.E.2d 636 (1991), *Harris v. Allied American Insurance Co.*, 152 Ill.App.3d 88, 90, 504 N.E.2d 151 (1987).

Also, the third reason advanced by the majority opinion of *Vaca v. Sipes*, that its decision "furthers the interest of the union as statutory agent," overlooks the interest of the injured employee, the only one who has anything to lose, based upon the observation of Justice Black's dissent.

Consistent with Justice Black's dissent in *Freeman v. Local Union No. 135 Chauffeurs, Teamsters, Warehousemen & Helpers*, 746 F.2d 1316, 1322 (7th Cir. 1984), an employee, such as the petitioner herein, should not be deprived "of an opportunity to petition a circuit court to vacate an arbitration award solely because he or she sought to work with his or her union in the first instance, and the union declined to further prosecute the action after the arbitration award."

In citing *Freeman v. Local Union No. 135 Chauffeurs, Teamsters, Warehousemen & Helpers*, the following pertinent language is quoted from the *Svoboda v. Department of Mental Health* decision, at 373:

> . . . the union at this stage is not under the same obligation that it is to bring the grievance in the first place. Thus, to hold that an individual employee has no standing to seek vacation of an arbitration award when the employee was represented by his or her union at the outset would have the effect of dissuading an employee from working with the union at the initiation of grievance proceedings.

For purposes of emphasis, in this instance, since the petitioner had exhausted his remedies via the arbitrator's award, the petitioner has the right to file the petition to vacate the arbitrator's award on the basis that the union collective bargaining agreement does not give the union the exclusive right to seek judicial review to vacate such an award when, in this matter, the petitioner is alleging that the arbitration award violates public policy.

That the arbitrator's award violates public policy is clearly demonstrated by the transcript of proceedings of September 13, 1995, page 7 (08), when Judge Berman of the Circuit Court observed:

> THE COURT: Well, the party who was affected by this and who certainly in my view has a right to bring this, even though you brought up he isn't a proper party, but he is absolutely a party, these proceedings were based on not only his, but two others who are not before me, rights to employment. And it just seems to me that the arbitrator went far beyond what authority he or she had to issue this kind of an order. And furthermore, you say in there as long as it's even handed. It's not even handed. How can it be even handed when he says to the City "you did it wrong, I agree you did it wrong, now I'm going to freeze everything to allow you to go back and do it right"? How is that even handed?

Consequently, the petitioner should not be prevented from having an individual access to the remedy that he is seeking wherein he has a personal stake in the arbitrator's award; that is, his job.

Because the petitioner was considered by Circuit Court Judge Berman as a third-party beneficiary to the collective bargaining agreement between the union and

employer herein, and because the petitioner has a personal stake in the arbitrator's award, that does not mean that an individual union member surrendered his right to protect his job in becoming a union member in order to make a union viable by having it represent the interest of all of its members, page 373 of the *Svoboda* opinion.

Under the liberty interest concept of the Fifth and Fourteenth Amendments to the United States Constitution, such a right cannot and should not be surrendered as it protects the individual from a loss of a job that is not based upon a decision for cause, but upon a decision that violates public policy.

As it is eloquently stated in *Arnett v. Kennedy,* 416 U.S. 134, 157, 40 L.Ed.2d 15, 35, 94 S.Ct. 1633, 1646 (1974), a person's employment does have liberty protections under the Constitution of the United States, "subspecies of the right of the individual 'to enjoy those privileges long recognized * * * as essential to the orderly pursuit of happiness by free men.'"

CONCLUSION

For the above-stated reasons, this Court should grant this Petition for Writ of Certiorari.

Respectfully submitted,

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APPENDIX A

[Filed September 24, 1998]

Docket No. 84104 – Agenda 24 – May 1998.
JOSEPH STAHULAK, Appellant, v.
THE CITY OF CHICAGO *et al.*, Appellees.

JUSTICE HARRISON delivered the opinion of the court:

The issue in this case is whether a union employee covered by a collective-bargaining agreement has standing to challenge an arbitration award in circuit court absent allegations that the union breached its duty of fair representation. The appellate court held that the employee had no such standing. It therefore reversed the circuit court's judgment in favor of the employee and remanded with directions to dismiss the employee's complaint. 291 Ill.App.3d 824. We allowed the employee's petition for leave to appeal (166 Ill.2d R. 315) and now affirm.

The pertinent facts are these. The City of Chicago (City) hired Joseph Stahulak as a firefighter in December 1990. The City and the Chicago Firefighters Union, Local No. 2, International Association of Firefighters, AFL-CIO-CIC (Union), are parties to a collective-bargaining agreement which governs the terms and conditions of employment of City firefighters. Under the agreement, firefighters are subject to a one-year probationary period.

On November 16, 1991, prior to completing his probationary period, Stahulak was discharged for violating the City residency requirement. The Union filed a

grievance on his behalf and on behalf of two other employees, arguing that the City violated section 16.2 of the collective-bargaining agreement, which requires the City to follow certain procedure before terminating an employee.

The grievance proceeded to arbitration. In an award issued January 28, 1993, the arbitrator found that the protections of section 16.2 applied to probationary employees. The arbitrator therefore sustained the grievance; however, he did not grant the subject employees unconditional reinstatement. He merely reinstated them to probationary status for the purpose of making the safeguards of section 16.2 available to them pending a final decision of the Chicago fire department.

After returning to probationary status, Stahulak was placed on paid administrative leave. He was ultimately discharged on March 29, 1993, based, again, on his violation of the residency requirement. Stahulak then filed a two-count complaint in circuit court of Cook County against the City; the Chicago fire department; Raymond E. Orozco, fire commissioner of the City of Chicago; and the Union. Count I asked the court to vacate the arbitration award, alleging that the arbitrator exceeded his powers in fashioning the remedy in this case. Count II asserted a cause of action for a common law writ of *certiorari*, but merely repeated the same allegations challenging the arbitration award in Count I.

Pretrial proceedings ensued and the parties eventually filed cross-motions for summary judgment. The circuit court granted summary judgment in favor of Stahulak, setting aside the arbitrator's award and

remanding the matter for arbitration with a finding that Stahulak had been an employee for over one year.

The appellate court reversed and remanded with instructions to dismiss Stahulak's complaint. 291 Ill.App.3d 824. It noted that under section 16 of the Illinois Public Labor Relations Act (5 ILCS 315/16 (West 1996)) and the Illinois Uniform Arbitration Act (710 ILCS 5/12 (West 1996)), proceedings to vacate an arbitration award entered pursuant to a collective-bargaining agreement must be brought by the parties to the agreement. 291 Ill.App.3d at 829. In this case, the City and the Union are parties to the agreement, but Stahulak as an individual is not. The appellate court reasoned that an individual employee is not entitled to judicial review of a grievance proceeding or arbitration unless the employee can show that his union's conduct in processing the grievance was arbitrary, discriminatory, or in bad faith. 291 Ill.App.3d at 832. Here, Stahulak made no allegations that the Union breached its duty of fair representation. Therefore, the court concluded that Stahulak lacked standing to bring a suit to overturn the arbitration award in this case.

Before this court, Stahulak contends that he has standing to challenge the arbitration award in circuit court without the burden of proving that the Union breached its duty of fair representation in the underlying proceeding. According to Stahulak, the Illinois Public Labor Relations Act (5 ILCS 315/1 *et seq.* (West 1996)) allows an individual employee to bring a grievance, compel arbitration, receive an award, and seek to vacate the award in circuit court.

The City and the other defendants disagree. They argue that Stahulak lacked standing to bring this suit

based on sections 8 and 16 of the Illinois Public Labor Relations Act (Act) (5 ILCS 315/8, 16 (West 1996)). This argument is well taken. Section 16 of the Act provides:

> "After the exhaustion of any arbitration mandated by this Act or any procedures mandated by a collective bargaining agreement, suits for violation of agreements *** between a public employer and a labor organization representing public employees may be brought by the parties to such agreement in the circuit court in the county in which the public employer transacts business or has its principal office." 5 ILCS 315/16 (West 1996).

Under the plain language of this statute, only the parties to a collective-bargaining agreement may attack an arbitration award in circuit court. Section 8 of the Act further specifies that "[t]he grievance and arbitration provisions of any collective bargaining agreement shall be subject to the Illinois 'Uniform Arbitration Act.'" 5 ILCS 315/8 (West 1996). The Uniform Arbitration Act, in turn, provides that: "[u]pon application of a party" a court shall consider vacating an arbitration award. 710 ILCS 5/12(a) (West 1996). Therefore, as under the Act, the Uniform Arbitration Act requires arbitration awards to be challenged in court by the parties to the collective-bargaining agreement.

Based on the foregoing provisions, we agree that because Stahulak is not a party to the agreement, he lacks standing to bring the suit at issue here. The principle that individual employees represented by a union cannot bring a suit to overturn the outcome of a grievance procedure or arbitration is further supported by Illinois case law. See *Mahoney v. City of Chicago*, 293 Ill.App.3d 69, 73-74 (1997), *Parks v. City of Evanston*, 139 Ill.App.3d 649, 652 (1985), *Consentino v.*

Price, 136 Ill.App.3d 490, 495 (1985). These cases hold that an individual union member is entitled to judicial review of grievance procedures or arbitration, only if the individual proves that the union's conduct in processing the grievance was arbitrary, discriminatory, or in bad faith. *Parks*, 139 Ill.App.3d at 652, *Consentino*, 136 Ill.App.3d at 495.

Stahulak makes no allegations that his union breached its duty of fair representation in the underlying proceedings. Yet, he contends that he still had standing to attack the arbitration award in this case, claiming that it is not necessary to make such allegations against a union. Stahulak urges this court to follow *Svoboda v. Department of Mental Health & Developmental Disabilities*, 162 Ill.App.3d 366 (1987), which held that individual employees have standing to bring suit to vacate an arbitrator's award and are not required to allege and prove that the union did not adequately represent them at earlier stages.

In reaching its holding, the court in *Svoboda* relied on section 6(b) of the Act, which provides that:

> "Nothing in this Act prevents an employee from presenting a grievance to the employer and having the grievance heard and settled without the intervention of an employee organization; provided that the exclusive bargaining representative is afforded the opportunity to be present at such conference and that any settlement made shall not be inconsistent with the terms of any agreement in effect between the employer and the exclusive bargaining representative." 5 ILCS 315/6(b) (West 1996).

The court reasoned that section 6(b) clearly allows an individual employee to bring a grievance on his own

without the aid of his union and that this section should be read in conjunction with section 16. *Svoboda*, 162 Ill.App.3d at 368. After reading these sections together, the court in *Svoboda* was convinced that "it was not the legislature's intent to allow suits to vacate an arbitrator's award to be brought by unions which have instituted grievance procedures on behalf of their members, but not suits by members who have brought grievance procedures on behalf of themselves." *Svoboda*, 162 Ill.App.3d at 369.

We decline to follow *Svoboda* because we disagree with the court's interpretation of section 6(b). Under our reading of section 6(b), that section is limited to allowing an employee to present a grievance to an employer at the initial stage of the grievance process, and to settle the grievance at a conference at which the union has an opportunity to be present. We find nothing in section 6(b) which allows an employee to pursue a grievance through the entire dispute resolution procedure, including arbitration and the filing of a suit to challenge an arbitration award, when an employee's union has chosen not to do so.

This construction of the statute underlies the collective-bargaining agreement involved in this case. Under that agreement, which establishes a three-tier grievance procedure, only the Union can invoke the higher stages of the grievance process. According to section 10.2 of the agreement, an individual employee or the Union may initiate the first step, which involves taking up the grievance with the employer's authorized representative. The two subsequent steps, which include appealing the grievance to the fire commissioner and then invoking arbitration, are to be initiated by

the Union in its capacity as a party to the collective-bargaining agreement.

Our construction of section 6(b) is further supported by federal precedent. Section 159(a) of the Labor Management Relations Act (LMRA) is virtually identical to section 6(b). It states that the designated union shall be the exclusive bargaining representative of the employees provided:

> "That any individual employee or group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given an opportunity to be present at such an adjustment." (Emphasis in original.) 29 U.S.C. §159(a) (1994).

Like section 6(b), this provision of the LMRA grants individual employees the right to present a grievance to their employers and resolve such a grievance without taking any formal steps against the employer. The federal courts have recognized, however, that once the union and employer invoke arbitration, only these parties have standing to challenge an award. *Shores v. Peabody Coal Co.*, 831 F.2d 1382, 1383 (7th Cir. 1987). Individual employees represented by a union lack standing to seek judicial review of a grievance procedure unless they prove that their union breached its duty of fair representation. *Shores v. Peabody Coal Co.*, 831 F.2d 1382, 1383-84 (7th Cir. 1987); *Anderson v. Norfolk & Western Ry. Co.*, 773 F.2d 880, 881-82 (7th Cir. 1985); see *Vaca v. Sipes*, 385 U.S. 171, 185-86, 17

L.Ed.2d 842, 855, 87 S.Ct. 903, 914 (1967). Our interpretation of section 6(b) is therefore consistent with the federal court's interpretation of the virtually identical provision in the LMRA.

Finally, Stahulak contends that he should not be deprived of the opportunity to petition the circuit court to overturn the arbitration award merely because he worked with the union in the first instance. Relying on *Svoboda*, Stahulak argues that he should not have to give up the ability to protect his employment when he chooses to be represented by a union and the union declines to further prosecute an action after the arbitration award. *Svoboda*, 162 Ill.App.3d at 373. He cites to the court's reasoning in *Svoboda* that such an outcome "would have the effect of dissuading an employee from working with the union at the initiation of grievance proceedings." *Svoboda*, 162 Ill.App.3d at 373.

As the appellate court pointed out in this case, Stahulak's assertions overlook the fact that the collective-bargaining agreement negotiated between his union and the City serves as the basis for his claim that he was improperly discharged. Stahulak did not give up the ability to protect his employment by joining a union. Instead, the specific procedures for terminating an employee outlined in section 16.2 of the agreement provided Stahulak with the grounds to challenge his termination. Without these protections contained in the agreement, Stahulak has no judicially enforceable right to protect his job.

The general purpose of collective bargaining is to enable employees to pool their economic strength by joining together in a union to improve conditions of

employment as a collective group. *Garcia v. Zenith Electronics Corp.*, 58 F.3d 1171, 1175 (7th Cir. 1995). In exchange for the benefits provided by the collective-bargaining agreement, Stahulak gave up his individual right to bargain with the City. We agree with the Supreme Court's reasoning when it addressed this issue in *Vaca v. Sipes*, 386 U.S. 171, 17 L.Ed.2d 842, 87 S.Ct. 903 (1967). In *Vaca*, the Supreme Court held that if individual union members could challenge their union's resolution of a grievance,

> "the settlement machinery provided by the contract would be substantially undermined, thus destroying the employer's confidence in the union's authority and returning the individual grievant to the vagaries of independent and unsystematic negotiations." *Vaca v. Sipes*, 386 U.S. at 191, 17 L.Ed.2d at 858, 87 S.Ct. at 917.

Therefore, we hold that individual employees represented by a union should only be allowed to seek judicial review of an arbitration award if they can show that their union breached its duty of fair representation. Because Stahulak made no such allegations, he lacked standing to bring a suit to overturn the arbitration award in this case.

The standing issue is dispositive of this appeal. There is no need to address the merits of the underlying labor dispute. For the foregoing reasons, the judgment of the appellate court is affirmed.

Affirmed.

APPENDIX B

(Letterhead of)

SUPREME COURT OF ILLINOIS
SUPREME COURT BUILDING
SPRINGFIELD 62701

JULEANN HORNYAK
CLERK OF THE COURT
(217) 782-2035

FIRST DISTRICT OFFICE
20TH FLOOR
160 N. LASALLE ST.
CHICAGO 60601
(312) 793-1332

November 30, 1998

Mr. Stanley H. Jakala
Attorney at Law
3219 S. Maple Ave.
Berwyn, IL 60402

No. 84104—Joseph Stahulak, appellant, v. The City of Chicago et al., etc., appellees. Appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for rehearing in the above entitled cause.

The mandate of this Court will issue to the appropriate Appellate Court and/or Circuit Court or other agency on December 10, 1998.

APPENDIX C

JOSEPH STAHULAK, Plaintiff-Appellee,
v. THE CITY OF CHICAGO *et al.*,
Defendants-Appellants (Chicago Firefighters
Union, Local No. 2, International Association
of Firefighters, AFL-CIO-CIC, Defendant).
First District (1st Division) No. 1-95-3611
Reversed and remanded.
Opinion filed August 25, 1997.

* * * * *

Appeal from the Circuit Court of Cook County; the Hon. Edwin M. Berman, Judge, presiding.

Susan S. Sher, Corporation Counsel, of Chicago (Lawrence Rosenthal, Benna Ruth Solomon, and Mardell Nereim, Assistant Corporation Counsel, of counsel), for appellants.

Stanley H. Jakala, of Berwyn, for appellee.

PRESIDING JUSTICE CAMPBELL delivered the opinion of the court:

Defendants City of Chicago (City), Chicago Fire Department (Department) and Raymond E. Orozco, fire commissioners of the City of Chicago (Commissioner), appeal a judgment of the circuit court of Cook County vacating an arbitration award regarding the employment of plaintiff Joseph Stahulak, issued pursuant to a collective bargaining agreement (CBA) between the City and defendant Chicago Firefighters Union, Local No. 2, International Association of Firefighters, AFL-CIO-CIC (Union). The Union is not a party to this appeal.

The record on appeal indicates the following facts. The City and the Union are parties to a CBA that

governs the terms and conditions of employment of City firefighters.

Prior to hiring Stahulak, the City had conducted a background check of his application. During September 1990, Department personnel went to the address where Stahulak was staying (apparently in Oak Lawn, Illinois) and asked where he lived. The Department informed him that he had to be a City resident. Stahulak attributed his location at that time to ongoing divorce proceedings.

The City hired Stahulak as a firefighter in December 1990. Section 9.1 of the CBA provides in part as follows:

> "B. New employees will serve a probationary period of one (1) year. Any employee may be discharged during the probationary period. In such event the employee shall be notified of the reasons for the discharge at least 15 days prior to the effective date of the discharge action. A copy of the notice will be sent to the Union upon request of the Union, the Employer shall meet within 10 days of the discharge notice with a special committee to be designated by the Union to discuss the reasons for the discharge.
>
> The employee and the Union may present evidence relating to the validity of the reasons or mitigating circumstances to the Employer at the meeting. The Employer shall then review such evidence and issue its final opinion. The Employer's final action shall not be subject to the grievance procedure."

Section 16.2 of the CBA provides as follows:

> "Section 16.2 Discipline and Discharge
>
> * * *

E. The Employer shall conduct disciplinary investigations when it receives complaints or has reason to believe an employee has failed to fulfill his responsibilities as an employee and just cause for discipline exists ***.

Prior to taking any final, disciplinary action and concluding its investigation, the Employer shall notify the employee of the contemplated measure of discipline to be imposed, and shall meet with the employee involved and inform him/her of the reasons for such contemplated disciplinary action. Copies of the following documents shall be given to the employee at this notification meeting:

1. Allegation of violations of Rules & Regulations
2. Statement of charges and specifications
3. Employee's initial statement of facts
4. Acknowledgment of notification and review
5. Disciplinary officer's recommendation
6 Copies of the employee's pertinent past discipline

The employee shall be entitled to Union representation at such meetings and shall be given the opportunity to rebut the reasons for such proposed discipline."

On October 28, 1991, Edward Altman, the supervising investigator of the internal affairs division of the Department, sent a letter to director of personnel John Tully, regarding an investigation launched in February 1991 and recommending that Stahulak be discharged for violation of the residency requirement.

Assistant director of personnel Charles Stewart delivered to Stahulak a letter notifying him that he would be discharged on November 16, 1991, for violating the City residency requirement. Stewart also read section 9.1 of the CBA to Stahulak at that time. A meeting was

held on November 13, 1991, where Stahulak submitted evidence regarding his residency. Steward also testified and submitted evidence. The decision to discharge Stahulak was affirmed in a memorandum issued the following day. Stahulak was discharged on November 16, 1991.

The Union filed a grievance on behalf of Stahulak and two other employees[1] that proceeded to arbitration. The issues submitted for arbitration were as follows:

> "Did the City violate § 16.2 of the collective agreement by failing to provide the grievants, all of whom were probationary employees, the procedural safeguards, provided therein? If so, what is the remedy?"

The matter was heard by the arbitrator, Alex Elston, on September 25, 1992. The City argued that section 16.2 of the CBA was not applicable to probationary employees. The Union argued that it had been the past practice of the City to afford the protections of section 16.2 to probationary employees.

On January 28, 1993, the arbitrator issued an award sustaining the grievance. However, the arbitrator rejected the Union's argument that the probationary employees should simply be reinstated. Instead, the arbitrator decided that the employees should be reinstated to probationary status for the sole purpose of making the safeguards of section 16.2 available to them, pending final decisions of the Department.

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[1] No issue is raised in this appeal regarding the other employees.

On March 1, 1993, Stahulak was placed on paid administrative leave. Stahulak was again discharged on March 29, 1993.

On May 18, 1993, Stahulak filed a two-count complaint against the defendants in the circuit court of Cook County.[2] Count I petitioned the court to vacate the arbitration award, alleging that the arbitrator exceeded his powers in fashioning the remedy in this case. Count II was a petition for a writ of *certiorari*, alleging that the defendants acted outside the law.

Pretrial proceedings ensued. The parties eventually filed cross-motions for summary judgment. On September 13, 1995, the trial court granted summary judgment in favor of Stahulak. The trial court vacated the arbitrator's award and remanded the matter for arbitration "with court finding that Plaintiff has been an employee over one year." This appeal followed.

Summary judgment is properly granted if the pleadings, depositions, and admissions on file, together with any affidavits, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Alop v. Edgewood Valley Community Ass'n*, 154 Ill.App.3d 482, 484, 507 N.E.2d 19, 21 (1987). The purpose of summary judgment is to determine whether a triable question of fact exists. *Seeger v. Canale*, 241 Ill.App.3d 177, 184, 607 N.E.2d 687, 692 (1993).

Initially, the appellants argue that the plaintiff lacked standing to bring this case because the Union did

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[2] No issue was raised in this case regarding the timeliness of plaintiff's complaint.

not join in the action and plaintiff failed to allege that the Union breached its duty of fair representation in the underlying proceedings. The appellants contend that allowing individual employees to collaterally attack the Union's resolution of a grievance without alleging a breach of the duty of fair representation will substantially undermine the settlement procedures provided by the CBA and create an incentive to eliminate such procedures. Stahulak responds that the appellants have waived the standing issue in this case.

The record on appeal indicates that appellants raised the standing issue in connection with their motion to dismiss and in connection with the cross-motions for summary judgment. The transcript of proceedings shows that the trial court considered the argument and rejected it. Accordingly, the argument is not waived on appeal.

The appellants' argument that plaintiff lacked standing to bring this suit is based on sections 8 and 16 of the Illinois Public Labor Relations Act (Act). See 5 ILCS 315/8, 16 (West 1996). Section 16 of the Act provides that, after an arbitration mandated by a CBA, suits alleging breach of the CBA may be brought by the *parties* to the CBA. See 5 ILCS 315/16 (West 1996). Section 8 of the Act provides that the grievance and arbitration procedures of a CBA under the Act shall be subject to the Illinois Uniform Arbitration Act, which in turn provides that a *party* may move to vacate an arbitration award. See 5 ILCS 315/8, 710 ILCS 5/12 (West 1996). The appellants note that the City and the Union are parties to the CBA, but plaintiff as an individual is not a party. Accordingly, the appellants

conclude that plaintiff cannot bring the suit at issue here.

The appellants correctly note that federal law interpreting similar provisions of the Labor Management Relations Act of 1947 (29 U.S.C. §§ 141 through 191 (1994)) (LMRA) establishes that an employee who fails to allege a breach of the duty of fair representation by the union in the underlying proceedings lacks standing to collaterally attack the outcome of grievance procedures. *Shores v. Peabody Coal Co.*, 831 F.2d 1382, 1383-84 (7th Cir. 1987); *Anderson v. Norfolk & Western Ry. Co.*, 773 F.2d 880, 881-82 (7th Cir. 1985) (and cases cited therein); see *Vaca v. Sipes*, 386 U.S. 171, 185-86, 17 L.Ed.2d 842, 855, 87 S.Ct. 903, 914 (1967).

Plaintiff relies on a decision of the second district of this court, *Svoboda v. Department of Mental Health & Developmental Disabilities*, 162 Ill.App.3d 366, 515 N.E.2d 446 (1987), which held that a union member has standing to seek to vacate an arbitration award without the burden of alleging and proving a breach of the duty of fair representation by the union in the underlying proceedings. *Svoboda*, 162 Ill.App.3d at 371, 515 N.E.2d at 449. However, in a similar context, the first district previously had held that an individual union member was entitled to judicial review only if he could show that the union's conduct in processing a grievance was arbitrary, discriminatory or in bad faith. *Parks v. City of Evanston*, 139 Ill.App.3d 649, 652, 487 N.E.2d 1091, 1094 (1985). The first district has also held that the complaint of an individual union member alleging wrongful discharge based on a violation of a CBA that failed to allege a breach of the duty of fair representation by the union in the underlying proceedings was

legally insufficient. *Consentino v. Price*, 136 Ill.App.3d 490, 495, 483 N.E.2d 297, 300 (1985).

One district of this court is not always bound to follow the decisions of other districts, although there may be compelling reasons to do so when dealing with similar facts and circumstances. *In re May 1991 Will County Grand Jury*, 152 Ill.2d 381, 398, 604 N.E.2d 929, 938 (1992). The second district has ruled directly on the standing issue. In so ruling, the second district appears to have been unaware that the first district has decided similar issues in a manner that would suggest a contrary result, though it was not bound to follow them. In the same manner, we turn to the issue of whether *Svoboda* offers compelling reasons for holding that Stahulak has standing in this case.

The *Svoboda* court relied primarily on section 6(b) of the Act both to interpret the plain language of section 16 of the Act and to distinguish Illinois law from federal case law. Section 6(b) of the Act provides:

> "Nothing in this Act prevents an employee from presenting a grievance to the employer and having the grievance heard and settled without the intervention of an employee organization; provided that the exclusive bargaining representative is afforded the opportunity to be present at such conference and that any settlement made shall not be inconsistent with the terms of any agreement in effect between the employer and the exclusive bargaining representative." 5 ILCS 315/6(b) (West 1996).

The *Svoboda* court concluded that it was not the legislature's intent to allow suits to vacate an arbitrator's award to be brought by unions that have instituted

grievance procedures on behalf of their members, but not suits by members who have brought grievance procedures on behalf of themselves. *Svoboda*, 162 Ill. App.3d at 369, 515 N.E.2d at 448. The *Svoboda* court also distinguished *Vaca* on the grounds that, given section 6(b) of the Act, the union was "not vested with the sole power to invoke the higher stages of the grievance procedure." *Svoboda*, 162 Ill.App.3d at 371-72, 515 N.E.2d at 449.

However, as the appellants note in this case, language virtually identical to that of section 6(b) of the Act appears in the LMRA. See 29 U.S.C. § 159(a) (1994). As noted above, federal cases interpreting the LMRA hold that individual union members generally lack standing to collaterally attack grievance proceedings. Moreover, the plain text of section 6(b) demonstrates that the ability of an individual union member to act outside the union in such matters is not absolute. For example, any settlement made without the union must be consistent with the relevant CBA. Perhaps most important for the purposes of this case, nothing in section 6(b) grants individual union members the right to take further action in the event that the grievance is not settled without the intervention of the union.

The CBA at issue here demonstrates how section 6(b) was implemented by the parties to the agreement. The grievance procedure set forth in section 10.2 of the CBA provides for a three-step process. Although an employee may take the first step—initiating a grievance—as an individual, the CBA clearly contemplates that any subsequent steps—including the invocation of arbitration—are to be initiated by the Union in its capacity as a party to the CBA.

In sum, under section 6(b) of the Act and the CBA involved in this case, the Union is vested with the sole power to invoke the higher stages of the grievance process. Accordingly, *Svoboda* does not offer a compelling reason for holding that Stahulak has standing in this case.

The *Svoboda* opinion also discusses federal law and concludes that these cases hold that union employees do have standing in cases such as this, but "encumber" such employees with the burden of alleging and proving fraud, deceit or a breach of the duty of fair representation by the union in the underlying proceedings. See *Svoboda*, 162 Ill.App.3d at 369-71, 515 N.E.2d at 448-49. However, such a reading of the federal cases overlooks the fact that a suit challenging the quality of a union's representation is far different from the sort of purely collateral attack at issue here. Indeed, under Illinois law, a union's breach of duty of fair representation is an unfair labor practice under the Act, which initially falls under the exclusive jurisdiction of the Illinois State Labor Relations Board, not the circuit court. *Foley v. American Federation of State, County & Municipal Employees, Council 31, Local No. 2258*, 199 Ill.App.3d 6, 10, 556 N.E.2d 581, 583 (1990). Accordingly, this aspect of *Svoboda* also does not offer a compelling reason for holding that Stahulak has standing in this case.

The *Svoboda* court ultimately concluded as follows:

> "While we are mindful that it is often the case that the individual employee must give up certain rights to make a union viable, we do not believe that giving up one's ability to protect his or her job is

one such right that can or should be given up." *Svoboda*, 162 Ill.App.3d at 373, 515 N.E.2d at 450.

Such an assertion overlooks the fact that the individual employee's claims in cases such as this one ultimately flow from the Act and the CBA negotiated between the City and the Union.

Historically, an employee was considered to be the servant of the master and could be discharged at any time without cause or notice. See, *e.g.*, *Carter Coal Co. v. Human Rights Comm'n*, 261 Ill.App.3d 1, 8, 633 N.E.2d 202, 207 (1994). The individual employee did not have a judicially enforceable right to protect his or her job that could be "given up." It is legislation such as the IPLRA that has made inroads into the employment-at-will doctrine, with employees gaining bargaining strength and job security through union representation and the collective bargaining process. See *Carter Coal Co.*, 261 Ill.App.3d at 8, 633 N.E.2d at 207. Allowing individual unionized employees to collaterally attack their union's resolution of a grievance (including acquiescence in an arbitration award) without showing that the union thereby breached its duty of fair representation would substantially undermine the settlement machinery provided by a CBA, destroy the public employer's confidence in the union's authority and ultimately return employees to the vagaries of independent, unsystematic negotiation. See *Vaca*, 386 U.S. at 191, 17 L.Ed.2d at 858, 87 S.Ct. at 917. Accordingly, *Svoboda* is not persuasive on this point.

In sum, *Svoboda* offers no compelling reason for holding that Stahulak has standing in this case, given the facts and circumstances presented by the record on

appeal. In the first district, an individual union member is entitled to judicial review of a grievance proceeding (including arbitration) only if he or she can show that the union's conduct in processing the grievance was arbitrary, discriminatory or in bad faith. See *Parks*, 139 Ill.App.3d at 652, 487 N.E.2d at 1094. In this case, no such conduct was alleged or shown.

Plaintiff correctly notes, however, that in raising the standing issue, the appellants did not specifically rely on *Parks, Consentino* or the federal cases cited in the appellants' brief. Thus, the standing issue was not presented as squarely as it might have been. Moreover, as in *Svoboda* and *Anderson*, we agree that the plaintiff has suffered an injury. See *Svoboda*, 162 Ill.App.3d at 368, 515 N.E.2d at 447; *Anderson*, 773 F.2d at 882-83. Given these circumstances, it is not inappropriate to comment briefly on the merits of the dispute. See *Anderson*, 773 F.2d at 882-83.

A court's review of an arbitrator's award is extremely limited. *American Federation of State, County & Municipal Employees, AFL-CIO v. State*, 124 Ill.2d 246, 254, 529 N.E.2d 534, 537 (1988) (*AFSCME).* A court must construe an award, if possible, as valid. *AFSCME*, 124 Ill.2d at 254, 529 N.E.2d at 537. The scope of an arbitrator's power generally depends upon what the parties agree to submit to arbitration. *AFSCME*, 124 Ill.2d at 254, 529 N.E.2d at 537. A public labor arbitration award must be enforced if the arbitrator acts within the scope of his or her authority and the award draws its essence form the CBA. *AFSCME*, 124 Ill.2d at 254, 529 N.E.2d at 537. An arbitrator is confined to interpretation and application of the CBA and cannot dispense his or her own brand of industrial justice. See

AFSCME, 124 Ill.2d at 255, 529 N.E.2d at 538. Nevertheless, within the scope of the CBA, the arbitrator must have flexibility in formulating a remedy to meet a wide variety of situations, as the drafters of a CBA may never have thought of what specific remedy should be awarded to meet a particular contingency. See *AFSCME*, 124 Ill.2d at 254-55, 529 N.E.2d at 537-38.

In this case, the arbitrator determined that the plaintiff was discharged without receiving procedural protections due him under the CBA, despite the plaintiff's status as a probationary employee. The issue of the remedy for this violation was expressly submitted to the arbitrator. The arbitration award reinstated plaintiff as a probationary employee, in order that he could avail himself of the procedural protections due him under the CBA, including the opportunity to rebut the charge against him.

The purpose of a remedy in contract is to place the injured party in the position he or she would have occupied if the contract had been performed, not a better position. *E.g., O'Neil v. Continental Bank, N.A.*, 278 Ill.App.3d 327, 662 N.E.2d 498 (1996). The remedy imposed by the arbitration award in this case meets that standard and therefore must be enforced, even where the reviewing court disagrees with the arbitrator's judgment on the merits. *AFSCME*, 124 Ill.2d at 255, 529 N.E.2d at 538. Accordingly, even if the plaintiff had standing in this case, it would be error to vacate the arbitration award.

As for Count II of the complaint, plaintiff sought a writ of *certiorari* on the ground that the defendants did not proceed according to law. However, plaintiff has

completely failed to identify what law was not followed by any of the defendants. Rather, plaintiff maintains that the arbitration award violated public policy, a ground not alleged by the plaintiff in the circuit court. The arbitrator was not named as a defendant.

However, assuming *arguendo* that these defects are not fatal to plaintiff's claim, we note that the case law plaintiff cites to argue that the award violates public policy addresses the question of whether an employee's probationary period may be extended retroactively by legislation. In this case, unlike the cases cited by the plaintiff, the discharge proceedings began prior to the end of the probationary period. Unlike the cases cited by the plaintiff, the probationary period was effectively extended as the result of a grievance procedure initiated on plaintiff's behalf. Moreover, the arbitration award, unlike the legislation at issue in the cases cited by the plaintiff, is specifically intended to apply to this plaintiff. This is not a case where the rules were changed in the middle of the game. Furthermore, the cases cited by the plaintiff simply do not establish a general public policy that probationary employment periods can never be extended. Thus, assuming *arguendo*, that plaintiff had standing, as a matter of law, plaintiff could not have established a claim for a writ of *certiorari*.

For all of the aforementioned reasons, the judgment of the circuit court of Cook County is reversed; the case is remanded with instructions to dismiss the complaint.

Reversed and remanded.

BUCKLEY and GALLAGHER, JJ., concur.